

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ATIBA WICKER, *et al.*,

Plaintiffs

v.

ROBERT SHANNON, *et al.*,

Defendants

CIVIL NO. 3:CV-09-1629

(Judge Caputo)

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiffs Atiba Wicker and Jocelyn Stallworth-Destouet filed the civil rights complaint in this action pursuant to 42 U.S.C. § 1983 on August 24, 2009. On December 21, 2009, the Defendants filed a Motion to Dismiss the Complaint. (Doc. 19.) On June 11, 2010, Mr. Wicker filed his brief in opposition to defendants' motion to dismiss. (Doc. 37.) Pending before the Court is Defendants' Motion to Stay Discovery pending the resolution of their motion to dismiss. (Doc. 20.)

The decision to stay discovery pending resolution of a potentially dispositive motion is within the discretion of the district court. *Mann v. Brenner*, No. 09-2461, 2010 WL 1220963 (3d Cir. Mar. 30, 2010). By its nature, a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) does not rely on matters outside the Plaintiff's complaint; thus, additional evidentiary matters will not be considered. Therefore, if truly dispositive, the resolution of the Motion to Dismiss will terminate the case without the need to respond to the pending discovery. See *Neitzke v. Williams*, 490 U.S. 319, 326-27, 109 S.Ct. 1827, 1832, 104 L.Ed.2d 338 (1989). Given the

potentially dispositive nature of the pending motion to dismiss, the court will grant defendants' motion to stay discovery pending resolution of their motion to dismiss. However, if the motion to dismiss does not dispose of all claims, defendants will have thirty (30) days from the date of the court's order to respond to plaintiffs' properly served discovery.

AND NOW, this 18th day of June, 2010, it is ordered that:

1. Defendants' Motion to Stay Discovery (doc. 20) is granted.
2. All discovery in this matter is stayed pending resolution of defendants' motion to dismiss.
3. Defendants shall respond to Plaintiffs' discovery requests no later than thirty (30) days after disposition of the pending motion to dismiss, unless the motion ends the litigation.



A. RICHARD CAPUTO
United States District Judge